

BUREAU OF AUTOMOTIVE REPAIR

FINAL STATEMENT OF REASONS

HEARING DATES: October 26, 2009

**SUBJECT MATTER OF
PROPOSED REGULATIONS:** Consumer Assistance Program Revisions

SECTIONS AFFECTED: §§ 3394.3, 3394.4 and 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations.

Updated Information:

The Initial Statement of Reasons is included in this file. The Bureau of Automotive Repair issued a 15-day notice of availability of modified text that includes the removal of the \$1,500 Vehicle Retirement (VR) incentive from the proposed regulatory action. The Department of Finance (DOF) did not approve the Bureau's proposed regulation, which would have increased the VR incentive by \$500 for low-income consumers. DOF concluded this would place added pressure on the High Polluter Repair or Removal Account (HPRRA) and push the fund toward insolvency, for these reasons the Bureau will keep the VR incentive unchanged at \$1,000.

On July 30, 2010 Office of Administrative Law (OAL) approved the Bureau's emergency regulation for the Enhanced Fleet Modernization Program (EFMP), OAL file number 2010-0721-05 E. This intervening file incorporated additional changes to the Consumer Assistance Program application. These changes rendered the Consumer Assistance Program application dated 08_022 (03/10) obsolete. In order to address concerns that the 08_022 (03/10) application was no longer suitable, the Bureau combined the 08_022 (03/10) version with the recently adopted 08_022 (07/10) emergency EFMP application. During this revision the Bureau incorporated an additional eligibility requirement from the 08_022 (03/10) application to the Repair Assistance option of CAP and created a new application dated 08_022 (08/10).

The following changes were made during the 15-day notice of availability of modified text:

1. Amend section 3394.3 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:
 - a. Remove the \$1,500 vehicle retirement incentive and language associated with income-eligible consumers.

The Bureau will continue to offer consumer \$1,000 to retire their high-polluting vehicle. This change is consistent with DOF's recommendation that the incentive should remain unchanged at \$1,000.

- b. Minor conforming, grammatical, structural and editorial changes were made to make the regulations easier for the public to interpret.
2. Amend section 3394.4 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:
- a. Remove subsection (6) from regulations. This change is necessary because vehicle retirement will not have an income-eligible component to the eligibility requirements. All consumers will receive \$1,000 for the retirement of a vehicle that has failed a biennial Smog Check inspection.
 - b. Minor conforming, grammatical, structural and editorial changes were made to make the regulations easier for the public to interpret.
3. Amend section 3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations, to read as follows:
- a. Incorporate by reference the updated application PPD 08_022 CAP/APP 08/10 and reduce the vehicle retirement incentive back down to \$1,000. The income-eligible component for vehicle retirement has been removed from the application. A majority of the changes to the application are minor conforming, grammatical, structural and editorial changes that were made in order to make the application easier for the public to read. Additionally, the Bureau added an additional eligibility requirement to the Repair Assistance option of CAP. At the bottom of page four of the application the Bureau added "You must be the registered owner and not have previously repaired this vehicle through CAP, as of July 1, 2009."

Local Mandate:

A mandate is not imposed on local agencies or school districts.

Business Impact:

This regulation will not adversely impact businesses. This initial determination is based on the following facts, evidence, documents, or testimony:

Vehicle Owner Impact

For Fiscal Year 2007-08, CAP paid for repairs on approximately 3,800 vehicles that had previously been repaired through the program. At an average of \$401 per repair, vehicle owners would incur \$1,523,800 in costs annually to make these repairs on their own given the participation limit of one time per registered owner for a particular vehicle.

However, this may be offset by those vehicle owners who choose to retire their vehicle for a cash incentive of \$1,000 under the VR option. Finally, this proposed regulatory action would not impact vehicle owners until the third year after the regulation has been adopted¹.

Effect on Small Business

In the original Notice of Proposed Regulatory Action the Bureau indicated an effect on small businesses. This statement was incorrect and not consistent with the Initial Statement of Reasons. Further, on the Economic and Fiscal Impact Statement the Bureau identified how costs borne by BAR would shift back to consumers.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

1. BAR considered keeping the federal poverty guidelines for consumers applying for income-eligible RA at 185%.

However, BAR has expenditure authority to continue the maximum household income level at 225% of the federal poverty guidelines for the income-eligible component of the RA option. Reducing the level to 185% of the poverty guidelines would create an excessive financial burden to low-income consumers that are mandated to receive a biennial Smog Check inspection.

2. The Bureau could continue to allow vehicles that failed a biennial Smog Check to utilize RA more than one time for repairs to the same vehicle.

BAR determined that continuing to allow vehicle owners to participate in the RA option more than once over several Smog Check cycles would be inefficient because of limited state resources. In addition, consumers would still be eligible for VR and could receive an economic incentive to permanently retire their high polluting vehicle.

¹ In the first year following the adoption of this regulation, vehicle owners would continue to be eligible to participate in the Repair Assistance option. The second year is designated as an off-cycle year and no inspection is required, since Smog Checks are mandated every other year. In the third year, if the vehicle owner received repair assistance in the previous biennial cycle, the vehicle owner would be ineligible to receive further assistance through RA.

Objections or Recommendations/Responses:

45-Day Comment Period

There were no objections or recommendations regarding the proposed action.

15-Day Notice of Modified Text

There were no objections or recommendations regarding the proposed action.